

Assembly Bill No. 281

CHAPTER 426

An act to add Article 2 (commencing with Section 5911) to Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code, relating to agriculture, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 11, 2009. Filed with
Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 281, De Leon. Citrus disease prevention: California Citrus Pest and Disease Prevention Committee.

Existing law generally provides for the eradication of pests that threaten this state's agriculture. Existing law provides that there is in the Department of Food and Agriculture the California Citrus Advisory Committee, comprised as specified. The committee is required to develop and make recommendations to the Secretary of Food and Agriculture on all matters regarding the implementation of an inspection program, as provided.

This bill would create in the Department of Food and Agriculture the California Citrus Pest and Disease Prevention Committee, which would consist of 17 members (14 producers in the citrus fruit industry, 2 citrus nursery operators, and one public member) to be appointed by the Secretary of Food and Agriculture, as specified. The bill would set out the powers and duties of the committee, including, among others, the authority to develop, subject to the approval of the secretary, a statewide citrus specific pest and disease work plan that includes informational programs to educate and train residential owners of citrus fruit, local communities, groups, and individuals on the prevention of pests, and diseases and their vectors, specific to citrus and programs for surveying, detecting, analyzing, and treating citrus pests and diseases. The bill would provide for a monthly assessment, as provided and for specified related purposes, to be paid by producers, as defined and except as provided, and remitted to the department and deposited into the Citrus Disease Management Account, which the bill would create in the Department of Food and Agriculture Fund. The bill would provide for a referendum voting procedure regarding the continued operation of these provisions.

Because this bill would impose assessment requirements on producers and handlers of citrus fruit, the violation of which would be a misdemeanor under other provisions of existing law, this bill would create a new crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Article 2 (commencing with Section 5911) is added to Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code, to read:

Article 2. Citrus Disease Prevention

5911. (a) The Legislature hereby finds and declares that the citrus killing diseases, Huanglongbing, citrus leprosis, citrus variegated chlorosis, and citrus canker, and the associated vectors present a clear and present danger to California's citrus industry, as well as to other commodities and plant life.

(b) This article is intended to establish an industry-funded program to assist in combating citrus specific diseases, vectors, and pests when found in California.

(c) This article is not intended to create new mandates or circumvent state and federal authority on citrus or other agricultural commodities.

(d) This article is not intended to establish a precedent, or to supersede or supplant in any way federal, state, or local government funding of efforts to combat citrus diseases and other pests in this state.

(e) The prevention and management of citrus diseases is a matter of public interest. The provisions of this article are enacted for the protection of the citrus industry and in the exercise of the police power of the state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

(f) The Legislature finds and declares that the California citrus industry creates one billion eight hundred million dollars (\$1,800,000,000) in citrus fruit, another one billion two hundred million dollars (\$1,200,000,000) in economic activity, and employs an estimated 25,000 people in the state.

5912. Unless the context otherwise requires, the following definitions shall govern the construction of this article:

(a) "Carton" means a unit equivalent to 40 pounds of citrus fruit.

(b) "Citrus" means "citrous" and any plants of the genera Citrus, Fortunella, Poncirus, and all hybrids having one or more of such as parents.

(c) "Citrus disease" includes any infectious, transmissible, or contagious disease or vector infesting citrus trees.

(d) "Committee" means the California Citrus Pest and Disease Prevention Committee.

(e) "Department" means the Department of Food and Agriculture.

(f) “Districts,” except as otherwise provided in Section 5914, consist of the following geographical areas:

(1) The Southern District consists of all growing areas in San Bernardino County and all other areas to the south, west, and east of San Bernardino County that are not included in any other district.

(2) The Coastal District consists of all growing areas in the Counties of Monterey, San Luis Obispo, Santa Barbara, and Ventura.

(3) The Kern District consists of all growing areas in Kern County.

(4) The Tulare District consists of all growing areas in Tulare County.

(5) The Northern District consists of all growing areas in Fresno County and all other areas to the north that are not included in any other district.

(g) “Handler” means a person or entity who receives citrus fruit from a producer and who prepares the citrus fruit for fresh market.

(h) “Marketing season” begins October 1 of each year and ends September 30 of the next year.

(i) “Person” means a producer, handler, or any other entity that holds title to citrus fruit subject to assessment pursuant to this article.

(j) “Producer” means any person in this state who is a grower of citrus fruit, but does not include a citrus nursery.

(k) “Secretary” means the Secretary of Food and Agriculture.

(l) “Specific to citrus” means of exclusive or principal concern to citrus as opposed to other commodities.

(m) “Technical Advisory Committee” means the committee in existence at the effective date of this article, or its successor, that is responsible for developing and approving the citrus tristeza virus effective plan for the Central California Tristeza Eradication Agency.

5913. (a) There is hereby created the Citrus Disease Management Account in the Department of Food and Agriculture Fund.

(b) The Citrus Disease Management Account shall consist of money from federal, industry, and other non-General Fund sources. Money from federal, industry, and other non-General Fund sources shall be available upon appropriation by the Legislature for the sole purpose of combating citrus specific pests, diseases, and their vectors.

5914. (a) There is hereby created in the department the California Citrus Pest and Disease Prevention Committee.

(b) The committee shall be composed of 17 members. Fourteen producer representatives shall be appointed by the secretary from nominations received from each district. District representation shall be determined by the secretary on a proportional basis equal to the production history of each district for the previous two years. The secretary shall also strive to appoint producers representing the different varieties of citrus fruit produced in California.

(c) One member shall be a public member, appointed by the secretary from the nominees recommended by the committee.

(d) Two members shall be citrus nursery operators, one representing northern California, defined as counties in the San Joaquin Valley and north but not including counties on the coast who shall be represented by a southern California designee, and one representing southern California,

appointed by the secretary from the nominees recommended by the committee.

(e) (1) The initial members of the committee shall be appointed within 30 days of the enactment of this article. The members shall serve staggered terms. The terms of the members of the committee shall expire as follows:

(A) Two members on September 30, 2010.

(B) Five members on September 30, 2011.

(C) Five members on September 30, 2012.

(D) Five members on September 30, 2013.

(2) The members of the committee shall allocate the initial terms among themselves by lot or other method.

(f) Appointments to the committee shall be for terms of four years. Vacancies shall be immediately filled by the secretary based on recommendations from the committee for the unexpired portion of the terms in which they occur.

(g) The secretary and other appropriate individuals, including, but not limited to, county agricultural commissioners, pest control advisors, and representatives of the University of California and California State University systems, as determined by the secretary, in consultation with the committee, shall be nonvoting ex officio members of the committee.

(h) Committee members may be compensated for reasonable expenses actually incurred in the performance of their duties, as determined by the secretary after consultation with the committee.

(i) The committee shall meet at the request of the secretary, the committee chairperson, or upon the request of three committee members.

(j) The committee shall appoint a chairperson, one or more vice chairpersons, and any other officers it deems necessary.

(k) The Legislature finds and declares that persons appointed to the committee are intended to represent and further the interests of the citrus industry, and that this representation and furtherance is intended to serve the public interest. Accordingly, the Legislature finds that, with respect to persons who are appointed to the committee, the citrus industry is tantamount to, and constitutes, the public generally within the meaning of Section 87103 of the Government Code.

5915. (a) The powers and duties of the committee are limited to activities involving the producers of citrus fruit and residential owners of citrus fruit or other host material.

(b) The committee may do all of the following:

(1) Develop, subject to the approval of the secretary, a statewide citrus specific pest and disease work plan that includes, but is not limited to, the following:

(A) Informational programs to educate and train residential owners of citrus fruit, local communities, groups, and individuals on the prevention of pests, and diseases and their vectors, specific to citrus.

(B) Programs for surveying, detecting, analyzing, and treating pests and diseases specific to citrus involving producers of citrus fruit and residential owners of citrus fruit and host materials, except as provided in Section 5930.

(2) Submit recommendations to the secretary on, but not limited to, the following:

(A) Annual assessment rate.

(B) Annual budget.

(C) Expenditures necessary to implement the statewide work plan developed pursuant to this section.

(D) The amount of fees to be levied, as provided in Section 5919.

(E) The receipt of money from other sources to pay any obligation of the committee and to accomplish the purposes of the committee in the manner provided in this article.

(3) Recommend to the secretary the adoption of regulations consistent with the powers and duties of the committee.

(c) The committee shall not engage in any activity deemed by the secretary to be contradictory to any eradication program or quarantine implemented to combat citrus specific pests, diseases, or related vectors.

(d) For any program or activity occurring pursuant to this section, the department shall be the lead agency, unless an agreement is reached between the committee and the secretary to authorize another agency within the state or local government to act as lead for specific activities.

5916. (a) Upon receipt of a recommendation from the committee for the adoption of regulations, the secretary shall do one of the following within 30 working days:

(1) Initiate the rulemaking process to adopt the recommendation of the committee.

(2) Decline to initiate the rulemaking process and provide the committee with a written statement of reasons for the decision.

(3) Request the committee to provide additional information regarding the recommended regulations.

(b) All regulations adopted pursuant to this article shall be adopted in compliance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), and may be subsequently repealed or amended as provided for in that act.

5917. No member or agent of the committee shall be personally liable for the actions of the committee or the department. No member or agent of the committee is responsible individually in any way to any other person for errors in judgment, mistakes, or other acts, by either commission or omission, as a principal, agent, or employee except for his or her own individual acts of dishonesty or crime. No member or agent of the committee is responsible individually for an act or omission of any other member or agent of the committee or the department. Liability is several and not joint, and no member or agent of the committee is liable for the default of any other member or agent of the committee or the department.

5918. The committee shall reimburse the secretary for all expenditures incurred by the secretary in carrying out his or her duties and responsibilities pursuant to this article, including the costs of implementing and

administering the administrative, enforcement, and regulatory recommendations of the statewide work plan developed by the committee.

5919. (a) During the first marketing season, beginning February 1, 2010, and ending September 30, 2010, the monthly assessment to be paid by producers shall be one cent (\$0.01) per carton. Thereafter, in addition to any other assessments, fees, or charges that may be required pursuant to this code, producers shall pay a monthly assessment established by the committee that shall not exceed nine cents (\$0.09) per carton. The assessment shall be:

- (1) Based on the number of 40-pound carton equivalents produced.
 - (2) Collected from the producer by the first handler. If a producer prepares the citrus fruit for market, the producer shall be deemed the handler.
 - (3) Remitted to the department by the first handler, along with an assessment report, at the end of each month during the marketing season.
 - (4) Deposited in the Citrus Disease Management Account in the Department of Food and Agriculture Fund or, upon the recommendation of the committee, deposited in accordance with Section 227 or Article 2.5 (commencing with Section 230) of Chapter 2 of Part 1 of Division 1. The use of the funds deposited in the Citrus Disease Management Account shall be limited to the activities authorized by this article.
- (b) A producer producing less than 750 40-pound carton equivalents shall not be required to remit the assessment provided in subdivision (a).
- (c) The committee may recommend to the secretary an assessment less than the amount specified in subdivision (a) or no assessment if no disease prevention program is necessary or if there is sufficient reserve to operate the program, except as provided in Section 5930.

5920. (a) Upon establishment of a disease prevention program, any handler who does not file the required monthly assessment report and assessments by the 10th day of the month following the month for which the assessment is payable shall pay a penalty of 10 percent of the assessment owed and, in addition, 1 ½ percent interest per month on the unpaid balance.

(b) Upon establishment of a disease prevention program, it shall be unlawful for any handler to refuse to collect the assessments or remit the assessments and the proper reports required by this article.

(c) A handler shall not charge a producer an administrative fee for collecting or remitting an assessment.

(d) A producer who disputes the amount of the assessment may file a claim with the secretary. The producer shall prove his or her claim by a preponderance of the evidence.

(e) A producer may not bring any claim against a handler for damages, or otherwise, in connection with the assessment or the required deduction by the handler of the moneys owed to the producer as provided in this article.

5921. No later than June 30, 2013, the secretary shall hold one or more public hearings to determine whether the operation of this article should be continued. Thereafter, the secretary shall conduct the review process every four years.

5922. (a) If the secretary finds after the hearing that a substantial question of opposition exists among affected producers under this article regarding whether the operation of this article should be continued, the secretary shall submit the article for approval utilizing the following voting procedures set forth in this section and Sections 5923 to 5927, inclusive. As used in this subdivision, “substantial question of opposition” means opposition to the substance of the petition among currently affected producers, and is not intended to mean a particular number of producers.

(b) Within 90 days of the secretary determining the requirement for referendum has been met, the secretary shall establish a list of persons eligible to vote on the continued implementation of this article.

(c) Eligibility shall be limited to producers who paid the assessment on citrus fruit in the immediately preceding marketing season.

(d) (1) In establishing the list, the secretary may require handlers, producers, and others to submit the names, mailing addresses, and assessment values of all producers who paid the assessment on citrus fruit in the immediately preceding marketing season.

(2) The information required by the secretary shall be filed either with the monthly assessment form or no later than 30 days following receipt of a written notice from the secretary requesting the information.

(e) Any producer whose name does not appear on the secretary’s list may have his or her name added to the list by filing with the secretary a signed statement identifying himself or herself as a producer that paid an assessment during the most recent marketing season.

5923. For the purpose of voting in the referendum required in Section 5922, only a producer required to pay the assessment pursuant to Section 5919 shall have the right to vote.

5924. In determining whether this article shall become inoperative, the secretary shall find that at least 40 percent of the total number of producers from the list established by the secretary participated in the referendum, and that either one of the following occurred:

(a) Fifty-five percent or more of the producers who voted in the referendum voted in favor of this article, and the producers who voted paid a majority of the assessment dollars on citrus fruit in the preceding marketing season that were paid by all the producers who voted in the referendum.

(b) A majority of the producers who voted in the referendum voted in favor of this article, and the producers who voted paid 55 percent or more of the assessment dollars on citrus fruit in the preceding marketing season that were paid by all the producers who voted in the referendum.

5925. The secretary shall establish a period in which to conduct the referendum that shall not be less than 10 days nor more than 60 days in duration. The secretary may prescribe additional procedures to conduct the referendum. If the initial period established is less than 60 days, the secretary may extend the period. However, the total referendum period may not exceed 60 days.

5926. Nonreceipt of a ballot shall not invalidate a referendum.

5927. (a) If the secretary finds that a favorable vote has not been given as provided in this article, this article shall become inoperative within one year of the end of the referendum period.

(b) If the secretary finds that a favorable vote has been given as provided in this article, he or she shall certify and give notice of the favorable vote to all persons whose names and addresses may be on file with the secretary as provided in Section 5922.

5928. Upon termination of this article, and based upon a recommendation of the committee subject to approval by the secretary, any collected assessments not required to defray financial obligations incurred pursuant to this article shall be returned on a pro rata basis to all persons from whom assessments were collected during the marketing season immediately preceding the date of termination or paid to any existing state or federal program engaged in citrus specific pest and disease prevention activities. The assessments refunded to handlers shall be paid to producers if the assessment was previously deducted from moneys owed to the producer by the handler.

5930. No later than July 1, 2011, the committee, in consultation with the department, shall enter into a memorandum of understanding with citrus pest control districts responsible for funding citrus tristeza virus prevention activities, pursuant to Part 5 (commencing with Section 8401) of Division 4, for the purpose of funding the implementation of the citrus tristeza virus effective plan. The memorandum of understanding shall include, but not be limited to, the following:

(a) Language providing that the programs, protocols, and implementation for the citrus tristeza virus effective plan will be developed and approved by the Technical Advisory Committee, or its successor, in consultation with the committee.

(b) Provision for the funding required to implement the citrus tristeza virus effective plan.

5931. In the event the committee and the citrus pest control districts do not agree on the terms of the memorandum of understanding as prescribed in Section 5930, the citrus pest control districts shall conduct an election to determine which entity shall provide funding for the citrus tristeza virus effective plan. The ballot shall ask landowners within the citrus pest control districts to select either, (1) the California Citrus Disease Management Committee and the Department of Food and Agriculture through the Citrus Disease Management Account to fund the citrus tristeza virus effective plan, or (2) the citrus pest control districts as the funding entity of the citrus tristeza virus effective plan.

5940. (a) The provisions of this article are severable.

(b) If any provision of this article or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because

this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the Citrus Pest and Disease Prevention Committee to, among other things, develop a work plan to deal with the recent discovery in Santa Ana of Asian citrus psyllids, a tiny insect that often carries citrus green disease, a pathogen that has destroyed groves in Florida and wiped out much of the citrus industries in China, India, Saudi Arabia, Egypt, and Brazil, it is necessary for this act to take effect immediately.